

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT RUSSELL SPENCE,)	
)	2:12cv857
Plaintiff,)	Electronic Filing
)	
v.)	Judge Cercone
)	Chief Magistrate Judge Lenihan
CHRISTOPHER THOMPSON, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on June 25, 2012 without the filing fee or a request for leave to proceed *in forma pauperis*. The Complaint (ECF No. 6) was subsequently filed on August 2, 2012, after Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* (ECF No. 3) was filed and granted. Before any of the Defendants had been served with the original complaint, Plaintiff filed an Amended Complaint (ECF No. 12) on September 7, 2012. The case was referred to Chief United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D.

Prior to service of the Amended Complaint, the magistrate judge conducted a review of the allegations contained therein, in accordance with the directives in 28 U.S.C. §1915(e). Thereafter, the magistrate judge issued her Report and Recommendation (ECF No. 14) on January 4, 2013, recommending that the Amended Complaint (ECF No. 12) be dismissed with prejudice in part and without prejudice in

part, under 28 U.S.C. § 1915(e)(2)(B), and that Plaintiff be given leave to file a second amended complaint as to the claims recommended for dismissal without prejudice. In particular, the magistrate judge recommended that the following claims be **dismissed with prejudice**:

(1) Potential *Bivens* claims against Chasity Thompson, Crystal Thompson, Candice Thompson, and Tywan Staples based on alleged violations of the Sixth, Seventh and Ninth Amendments as asserted in paragraphs 310-11, 316, 345 and 361 of the Amended Complaint;

(2) Fourth Amendment claims against Christopher Thompson, Crystal Thompson, Candice Thompson, Daleena Johnson, Arnold Staples, Jr., Arnold Staples III, Darius Staples, Dontane Staples, Lillian Staples, Donna Staples, LaRue Staples, Tiffany Staples, Tywan Staples, Rita Staples, Monica Staples, Montel Staples, Oronde Shelton, and Chasity Thompson, asserted in paragraphs 283, 286, 287, 288, 289, 290, 294, 296, 297, 308, 324, 326, 335-36, 343, 352 of the Amended Complaint;

(3) Fifth Amendment Claims for alleged violations of the Takings Clause against Chasity Thompson, Candice Thompson, Crystal Thompson, Christopher Thompson, Daleena Johnson, Donna Staples, Tywan Staples, Montel Staples, Monica Staples, the Rivers Casino, and Craig Clark, asserted in paragraphs 304-07, 346-47, and 353 of the Amended Complaint;

(4) Claims under the Fifth Amendment (unidentified clause) against Rita Staples, Daleena Johnson, Montel and Monica Staples, and Chasity Thompson, asserted in paragraphs 313, 334, 341-42, 344, 348, 359-60 of the Amended Complaint;

(5) Sixth Amendment claims against Arnold Staples Jr., Arnold Staples III, Dontane Staples, Darius Staples, Lillian Staples, Donna Staples, LaRue Staples, Tiffany Staples, Rita Staples, Tywan Staples, Terry Staples, the Rivers Casino, Craig Clark, Stephie Ramaley, Chasity Thompson, Crystal Thompson, and Candice Thompson, asserted in paragraphs 345, 354-358, 361 of the Amended Complaint;

(6) Seventh Amendment claims against Chasity Thompson, the Rivers Casino, Craig Clark, Rita Staples, Montel Staples and Monica Staples, asserted in paragraphs 311, 317, 325, 349-50 of the Amended Complaint;

(7) Ninth Amendment claims against Chasity Thompson, Tywan Staples, Crystal Thompson, Christopher Thompson, and Candice Thompson, asserted in paragraphs 310, 316 and 322 of the Amended Complaint;

(8) Section 1981 claim to the extent based on conduct occurring prior to June 25, 2010;

(9) Section 1982 claim to the extent based on conduct occurring prior to June 25, 2010;

(10) Section 1983 and/or Fourteenth Amendment claims as set forth in paragraphs 268, 271, 274, 277, 284-85, 291, 298, 301-02, 318-321, and 333 of the Amended Complaint, against Oronde Shelton, Manikia Mickie, Crystal Thompson, Montel Staples, Christopher Thompson, Stephie Ramaley, Chasity Thompson, the Rivers Casino, Craig Clark, Donna Staples, Daleena Johnson, Candice Thompson, LaRue Staples, and Tiffany Staples;

(11) Section 1985(2) and 1985(3) claims against all Defendants;

(12) Section 2000c-5 claim against all Defendants; and

(13) Claims asserted for alleged violations of unidentified state and federal laws against Stephie Ramaley, Chasity Thompson, Rita Staples, Monica Staples, Montel Staples, Terry Staples, Tywan Staples, Daleena Johnson, LaRue and Donna Staples, as set forth in paragraphs 292, 293, 299, 300, 303, 312, 314, 323, 327-331, 337-40, 351, 362 of the Amended Complaint.

The magistrate judge further recommended that the following claims be **dismissed without prejudice**, and Plaintiff be allowed to file a Second Amended Complaint setting forth sufficient factual allegations to cure the deficiencies identified in the Report and Recommendation:

(1) Section 1981 claim to the extent based on conduct occurring on or after June 25, 2010;

(2) Section 1982 claim to the extent based on conduct occurring on or after June 25, 2010; and

(3) A potential *Bivens* claim against Oronde Shelton, Manikia Mickie, Crystal Thompson, Montel Staples, Tywan Staples, and Chasity Thompson, based on the alleged violations of Plaintiff's Fifth Amendment rights (other than the Takings Clause) asserted in paragraphs 267, 270, 273, 276, 309 and 332 of the Amended Complaint, to the extent based on conduct occurring on or after June 25, 2010.

Service of the Report and Recommendation was made on Plaintiff at the Beaver County Jail, 6000 Woodlawn Road, Beaver, PA 15001. Plaintiff was informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule

72.D.2 of the Local Rules of Court, that he had fourteen (14) days to file any objections. On January 23, 2013, Plaintiff filed his objections (ECF No. 17) to the Report and Recommendation.

After review of the pleadings and documents in the case, together with the Report and Recommendation and Plaintiff's objections thereto, the following Order is entered:

AND NOW, this 19th day of March, 2013,

IT IS HEREBY ORDERED that the Amended Complaint filed by Plaintiff, Robert Russell Spence (ECF No. 12), is **DISMISSED WITH PREJUDICE IN PART AND WITHOUT PREJUDICE IN PART** as set forth below.

IT IS HEREBY ORDERED that the following claims are **DISMISSED WITH PREJUDICE**:

(1) Potential *Bivens* claims against Chasity Thompson, Crystal Thompson, Candice Thompson, and Tywan Staples based on alleged violations of the Sixth, Seventh and Ninth Amendments as asserted in paragraphs 310-11, 316, 345 and 361 of the Amended Complaint;

(2) Fourth Amendment claims against Christopher Thompson, Crystal Thompson, Candice Thompson, Daleena Johnson, Arnold Staples, Jr., Arnold Staples III, Darius Staples, Dontane Staples, Lillian Staples, Donna Staples, LaRue Staples, Tiffany Staples, Tywan Staples, Rita Staples, Monica Staples, Montel Staples, Oronde Shelton, and Chasity Thompson, asserted in paragraphs 283, 286, 287, 288, 289, 290, 294, 296, 297, 308, 324, 326, 335-36, 343, 352 of the Amended Complaint;

(3) Fifth Amendment Claims for alleged violations of the Takings Clause against Chasity Thompson, Candice Thompson, Crystal Thompson, Christopher Thompson, Daleena Johnson, Donna Staples, Tywan Staples, Montel Staples, Monica Staples, the Rivers Casino, and Craig Clark, asserted in paragraphs 304-07, 346-47, and 353 of the Amended Complaint;

(4) Claims under the Fifth Amendment (unidentified clause) against Rita Staples, Daleena Johnson, Montel and Monica Staples, and Chasity Thompson, asserted in paragraphs 313, 334, 341-42, 344, 348, 359-60 of the Amended Complaint;

(5) Sixth Amendment claims against Arnold Staples Jr., Arnold Staples III, Dontane Staples, Darius Staples, Lillian Staples, Donna Staples, LaRue Staples, Tiffany Staples, Rita Staples, Tywan Staples, Terry Staples, the Rivers Casino, Craig Clark, Stephe Ramaley, Chasity Thompson, Crystal Thompson, and Candice Thompson, asserted in paragraphs 345, 354-358, 361 of the Amended Complaint;

(6) Seventh Amendment claims against Chasity Thompson, the Rivers Casino, Craig Clark, Rita Staples, Montel Staples and Monica Staples, asserted in paragraphs 311, 317, 325, 349-50 of the Amended Complaint;

(7) Ninth Amendment claims against Chasity Thompson, Tywan Staples, Crystal Thompson, Christopher Thompson, and Candice Thompson, asserted in paragraphs 310, 316 and 322 of the Amended Complaint;

(8) Section 1981 claim to the extent based on conduct occurring prior to June 25, 2010;

(9) Section 1982 claim to the extent based on conduct occurring prior to June 25, 2010;

(10) Section 1983 and/or Fourteenth Amendment claims as set forth in paragraphs 268, 271, 274, 277, 284-85, 291, 298, 301-02, 318-321, and 333 of the Amended Complaint, against Oronde Shelton, Manikia Mickie, Crystal Thompson, Montel Staples, Christopher Thompson, Stephie Ramaley, Chasity Thompson, the Rivers Casino, Craig Clark, Donna Staples, Daleena Johnson, Candice Thompson, LaRue Staples, and Tiffany Staples;

(11) Section 1985(2) and 1985(3) claims against all Defendants;

(12) Section 2000c-5 claim against all Defendants; and

(13) Claims asserted for alleged violations of unidentified state and federal laws against Stephie Ramaley, Chasity Thompson, Rita Staples, Monica Staples, Montel Staples, Terry Staples, Tywan Staples, Daleena Johnson, LaRue and Donna Staples, as set forth in paragraphs 292, 293, 299, 300, 303, 312, 314, 323, 327-331, 337-40, 351, 362 of the Amended Complaint.

IT IS FURTHER ORDERED that the following claims are dismissed without prejudice:

(1) Section 1981 claim to the extent based on conduct occurring on or after June 25, 2010;

(2) Section 1982 claim to the extent based on conduct occurring on or after June 25, 2010; and

(3) A potential *Bivens* claim against Oronde Shelton, Manikia Mickie, Crystal Thompson, Montel Staples, Tywan Staples, and Chasity Thompson, based on the alleged violations of Plaintiff's Fifth Amendment rights (other than the Takings Clause)

asserted in paragraphs 267, 270, 273, 276, 309 and 332 of the Amended Complaint, to the extent based on conduct occurring on or after June 25, 2010.

IT IS FURTHER ORDERED that as to the claims dismissed *without prejudice*, Plaintiff is granted leave to file a second amended complaint setting forth sufficient factual allegations to cure the deficiencies identified in the Report and Recommendation, within twenty-one (21) days of the date of this Order. Dismissal of these claims *with prejudice* may be ordered if a timely amendment is not filed. If Plaintiff does not wish to file a second amended complaint, he may file an appropriate notice with the Court asserting his intent to stand on the Amended Complaint (ECF No. 12), at which time the Court may enter an order dismissing the entire action with prejudice without further notice to Plaintiff.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 14) of Chief Magistrate Judge Lenihan, dated January 4, 2013, is adopted as the opinion of the Court.



DAVID STEWART CERONE
United States District Judge

cc: Robert Russell Spence
Beaver County Jail
6000 Woodlawn Road
Beaver, PA 15001

(Via First Class Mail)